



**BOLTON
& MENK**

Real People. Real Solutions.

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September 10, 2019

Darrell Pettis, PE
Le Sueur County
88 South Park Avenue
Le Center, MN 56057

RE: West Jefferson Lake Sanitary Sewer Collection System – Construction Proposal
Le Sueur County, Minn.
Project No.: M15.111340

Dear Darrell,

Bolton & Menk, Inc. is pleased to submit this Agreement for Professional Services to Le Sueur County to provide Construction Related Services for the West Jefferson Lake Sanitary Sewer Collection System with connection to the City of Cleveland.

We look forward to continuing to work with you and your staff including the West Jefferson Lake Association on this great project. Please reach out to me with any questions or comments. I can be reached at 507-380-2464 or Jason.Femrite@bolton-menk.com.

Sincerely,

Bolton & Menk, Inc.

Jason L. Femrite, P.E.
Principal Engineer

AGREEMENT FOR PROFESSIONAL SERVICES
WEST JEFFERSON SANITARY SEWER COLLECTION SYSTEM
LE SUEUR COUNTY, MINNESOTA

This Agreement, made this _____ day of _____, 2019, by and between the County of Le Sueur, 88 South Park Avenue, Le Center, Minnesota, hereinafter referred to as CLIENT, and Bolton & Menk, Inc., 1960 Premier Drive, Mankato, Minnesota, hereinafter referred to as CONSULTANT.

WITNESS, whereas the CLIENT intends to employ professional services required to design the West Jefferson Lake Sanitary Sewer Collection System in rural Le Sueur County, Minnesota

Whereas the CONSULTANT agrees to furnish professional engineering services required by the CLIENT, and

Whereas, the services will include a partial project sequence to include the development of plans & specifications and bidding documents, and

Whereas, it is intended that this Agreement shall govern the terms of employment of the CONSULTANT and all conditions thereof.

NOW, THEREFORE, in consideration of the mutual covenants and promises between the parties hereto, it is agreed:

SECTION I - CONSULTANT'S SERVICES

- A. The CONSULTANT agrees to perform the various Basic Services in connection with the proposed project as described in Exhibit I.
- B. Upon mutual agreement of the parties hereto, Additional Services may be authorized as described in Exhibit I or as described in Paragraph IV.B.

SECTION II - THE CLIENT'S RESPONSIBILITIES

- A. The CLIENT shall promptly compensate the CONSULTANT in accordance with Section III of this Agreement.
- B. The CLIENT shall place any and all previously acquired information in its custody at the disposal of the CONSULTANT for its use. Such information shall include but shall not be limited boundary surveys, topographic surveys, preliminary sketch plan layouts, building plans, soil surveys, abstracts, deed descriptions, tile maps and layouts, aerial photos, utility agreements, environmental reviews, and zoning limitations. The CONSULTANT may rely upon the accuracy and sufficiency of all such information in performing services unless otherwise instructed, in writing, by CLIENT.
- C. The CLIENT will guarantee access to and make all provisions for entry upon both public and private portions of the project and pertinent adjoining properties.
- D. The CLIENT will give prompt notice to the CONSULTANT whenever the CLIENT observes or otherwise becomes aware of any defect in the proposed project.

- E. The CLIENT shall designate a liaison person to act as the CLIENT'S representative with respect to services to be rendered under this Agreement. Said representative shall have the authority to transmit instructions, receive instructions, receive information, interpret and define the CLIENT'S policies with respect to the project and CONSULTANT'S services.
- F. The CLIENT shall provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for completion of the consultant services described in this agreement.
- G. The CLIENT will obtain any and all regulatory permits required for the proper and legal execution of the project.
- H. The CLIENT will hire, when requested by the CONSULTANT, an independent test company to perform laboratory and material testing services, and soil investigation that can be justified for the proper design and construction of the project. The CONSULTANT shall assist the CLIENT in selecting a testing company. Payment for testing services shall be made directly to the testing company by the CLIENT and is not part of this Agreement. Any additional inspections required by the County or State (such as plumbing or electrical inspections...etc.) will be hired by the CLIENT.

SECTION III - COMPENSATION FOR SERVICES

A. FEES

The CLIENT will compensate the CONSULTANT in accordance with the following schedule of fees for the time spent in performance of Agreement services.

Employee Classification	Hourly Billing Rates
Senior Principal	\$150-280/Hour
Principal Engineer/Surveyor/Planner/GIS/Landscape Architect	\$140-225
Senior Engineer/Surveyor/Planner/GIS/Landscape Architect	\$110-210
Project Manager (Inc. Survey, GIS, Landscape Architect)	\$100-195
Project Engineer/Surveyor/Planner/Landscape Architect	\$85-190
Design Engineer/Landscape Designer/Graduate Engineer/Surveyor	\$80-190
Specialist (Nat. Resources; GIS; Traffic; Graphics; Other)	\$60-175
Senior Technician (Inc. Construction, GIS, Survey1)	\$85-180
Technician (Inc. Construction, GIS, Survey1)	\$65-150
Administrative/Corporate Specialists	\$45-125
Structural/Electrical/Mechanical/Architect	\$120-150
GPS/Robotic Survey Equipment	NO CHARGE
CAD/Computer Usage	NO CHARGE
Routine Office Supplies	NO CHARGE
Routine Photo Copying/Reproduction	NO CHARGE
Field Supplies/Survey Stakes & Equipment	NO CHARGE
Mileage	NO CHARGE

¹ No Separate charges will be made for GPS or robotic total stations on Bolton & Menk, Inc. survey assignments; the costs of this equipment are included in the rates for Survey Technicians.

2. Charges are based on hours spent at hourly rates in effect for the individuals performing the work. The hourly rates for principals, associates and members of the staff vary according to skill and experience.

These rates include an overhead factor, which accounts for federal and state taxes and required benefits, as well as insurance, office expenses and profit. In addition, the overhead factor includes vehicle and personal expenses, stakes and supplies as noted above. Unusual expenses, such as large quantities of prints, reproductions ordered in connection with subdivision plats, outside professional assistance and other items of this general nature, will be billed out separately. Overtime shall not result in additional costs to the CLIENT but shall be billed at normal hourly rates.

3. Total cost for the Basic Services, as itemized under Section I.A. of EXHIBIT I shall not exceed \$321,500.
- B. The payment to the CONSULTANT will be made by the CLIENT upon billing at intervals not more often than monthly at the herein rates.

SECTION IV - GENERAL

A. **STANDARD OF CARE**

Professional services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Consultant's profession currently practicing under similar conditions. No warranty, express or implied, is made.

B. **CHANGE IN PROJECT SCOPE**

In the event the CLIENT changes or is required to change the scope of the project from that described in Section I and/or the applicable addendum, and such changes require Additional Services by the CONSULTANT, the CONSULTANT shall be entitled to additional compensation at the applicable hourly rates. The CONSULTANT shall give notice to the CLIENT of any Additional Services, prior to furnishing such additional services. The CLIENT may request an estimate of additional cost from the CONSULTANT, and upon receipt of the request, the CONSULTANT shall furnish such, prior to authorization of the changed scope of work.

C. **LIMITATION OF LIABILITY**

CONSULTANT shall indemnify, defend, and hold harmless CLIENT and its officials, agents and employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by CONSULTANT'S employees, agents, or subconsultants. In no event shall CLIENT be liable to CONSULTANT for consequential, incidental, indirect, special, or punitive damages.

CLIENT shall indemnify, defend, and hold harmless CONSULTANT and its employees from any loss, claim, liability, and expense (including reasonable attorneys' fees and expenses of litigation) arising from, or based in the whole, or in any part, on any negligent act or omission by CLIENT'S employees, agents, or consultants. In no event shall CONSULTANT be liable to CLIENT for consequential, incidental, indirect, special, or punitive damages.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CLIENT or the CONSULTANT. The CONSULTANT'S services under this Agreement are being performed solely for the CLIENT'S benefit, and no other entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services provided hereunder. The CLIENT agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of the paragraph.

In acknowledgment that the CLIENT has previously determined the justification and need for the proposed improvements and also controls operation of the completed project, the CLIENT agrees, to the fullest extent permitted by law, to limit and hold the CONSULTANT harmless from any liability to any person, firm or corporation arising from claims relating to the justification (or improper justification), maintenance and operation of the project.

D. INSURANCE

The CONSULTANT agrees to maintain, at the CONSULTANT'S expense, statutory worker's compensation coverage.

The CONSULTANT also agrees to maintain, at CONSULTANT'S expense, general liability insurance coverage insuring CONSULTANT against claims for bodily injury, death or property damage arising out of CONSULTANT'S general business activities (including automobile use). The liability insurance policy shall provide coverage for each occurrence in the minimum amount of \$1,000,000.

During the period of design and construction of the project, the CONSULTANT also agrees to maintain, at CONSULTANT'S expense, Professional Liability Insurance coverage insuring CONSULTANT against damages for legal liability arising from an error, omission or negligent act in the performance of professional services required by this agreement, providing that such coverage is reasonably available at commercially affordable premiums. For purposes of this agreement, "reasonably available" and "commercially affordable" shall mean that more than half of the design professionals practicing in this state in CONSULTANT'S discipline are able to obtain coverage. The professional liability insurance policy shall provide coverage for each occurrence in the amount of \$1,000,000 and annual aggregate of \$1,000,000 on a claims-made basis.

Upon request of CLIENT, CONSULTANT shall provide CLIENT with certificates of insurance, showing evidence of required coverages.

E. OPINIONS OR ESTIMATES OF CONSTRUCTION COST

Where provided by the CONSULTANT as part of Exhibit I or otherwise, opinions or estimates of construction cost will generally be based upon public construction cost information. Since the CONSULTANT has no control over the cost of labor, materials, competitive bidding process, weather conditions and other factors affecting the cost of construction, all cost estimates are opinions for general information of the CLIENT and the CONSULTANT does not warrant or guarantee the accuracy of construction cost opinions or estimates. The CLIENT acknowledges that costs for project financing should be based upon contracted construction costs with appropriate contingencies.

F. USE OF ELECTRONIC/DIGITAL DATA

Because of the potential instability of electronic/digital data and susceptibility to unauthorized changes, copies of documents that may be relied upon by CLIENT are limited to the printed copies (also known as hard copies) that are signed or sealed by CONSULTANT. Except for electronic/digital data which is specifically identified as a project deliverable by this AGREEMENT or except as otherwise explicitly provided in this AGREEMENT, all electronic/digital data developed by the CONSULTANT as part of the PROJECT is acknowledged to be an internal working document for the CONSULTANT'S purposes solely and any such information provided to the CLIENT shall be on an "AS IS" basis strictly for the convenience of the CLIENT without any warranties of any kind. As such, the CLIENT is advised and acknowledges that use of such information may require substantial modification and independent verification by the CLIENT (or its designees). Provision of electronic/digital data, whether required by this Agreement or provided as a convenience to the Client, does not include any license of software or other systems necessary to read, use or reproduce the information. It is the responsibility of the CLIENT to verify compatibility with its system and long-term stability of media. CLIENT shall indemnify and hold harmless CONSULTANT and its Subconsultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting from third party use or any adaptation or distribution of electronic/digital data provided under this AGREEMENT, unless such third party use and adaptation or distribution is explicitly authorized by this AGREEMENT.

G. REUSE OF DOCUMENTS

Drawings and Specifications and all other documents (including electronic and digital versions of any documents) prepared or furnished by CONSULTANT pursuant to this AGREEMENT are instruments of service in respect to the Project and CONSULTANT shall retain an ownership interest therein. Upon payment of all fees owed to the CONSULTANT, the CLIENT shall acquire an ownership interest in all identified deliverables, including Plans and Specifications, for any reasonable use relative to the Project and the general operations of the CLIENT. CLIENT may make and disseminate copies for information and reference in connection with the use and maintenance of the Project by the CLIENT. However, such documents are not intended or represented to be suitable for reuse by CLIENT or others on extensions of the Project or on any other project and any reuse other than that specifically intended by this AGREEMENT will be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT.

H. CONFIDENTIALITY

CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than CONSULTANT'S employees and subconsultants any information obtained from CLIENT not previously in the public domain or not otherwise previously known to or generated by CONSULTANT. These provisions shall not apply to information in whatever form that comes into the public domain through no fault of CONSULTANT; or is furnished to CONSULTANT by a third party who is under no obligation to keep such information confidential; or is information for which the CONSULTANT is required to provide by law or authority with proper jurisdiction; or is information upon which the CONSULTANT must rely for defense of any claim or legal action.

I. PERIOD OF AGREEMENT

This Agreement will remain in effect for the longer of a period of two years or such other explicitly identified completion period, after which time the Agreement may be extended upon mutual agreement of both parties.

J. PAYMENTS

If CLIENT fails to make any payment due CONSULTANT for services and expenses within thirty days after date of the CONSULTANT'S invoice, a service charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less, will be charged on any unpaid balance. In addition after giving seven days' written notice to CLIENT, CONSULTANT may, without waiving any claim or right against the CLIENT and without incurring liability whatsoever to the CLIENT, suspend services and withhold project deliverables due under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

K. TERMINATION

This Agreement may be terminated by either party for any reason or for convenience by either party upon seven (7) days written notice.

In the event of termination, the CLIENT shall be obligated to the CONSULTANT for payment of amounts due and owing including payment for services performed or furnished to the date and time of termination, computed in accordance with Section III of this Agreement.

L. CONTINGENT FEE

The CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONSULTANT to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from award or making of this Agreement.

M. NON-DISCRIMINATION

The provisions of any applicable law or ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set forth herein.

The CONSULTANT is an Equal Opportunity Employer and it is the policy of the CONSULTANT that all employees, persons seeking employment, subcontractors, subconsultants and vendors are treated without regard to their race, religion, sex, color, national origin, disability, age, sexual orientation, marital status, public assistance status or any other characteristic protected by federal, state or local law.

N. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Minnesota.

O. DISPUTE RESOLUTION

CLIENT and CONSULTANT agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute prior to proceeding to formal dispute resolution or exercising their rights under law. Any claims or disputes unresolved after good faith negotiations shall first be submitted to mediation utilizing the Minnesota District Court Rule 114 Roster. Disputes not resolved by mediation shall then be submitted to arbitration in accordance with provisions of the Construction Industry Arbitration Rules of the American Arbitration Association. CONSULTANT and the CLIENT agree to require an equivalent dispute resolution process governing all contractors, sub-contractors, suppliers, consultants, and fabricators concerned with this project.

P. SURVIVAL

All obligations, representations and provisions made in or given in Section IV of this Agreement will survive the completion of all services of the CONSULTANT under this Agreement or the termination of this Agreement for any reason.

Q. SEVERABILITY

Any provision or part of the Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CLIENT and CONSULTANT, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

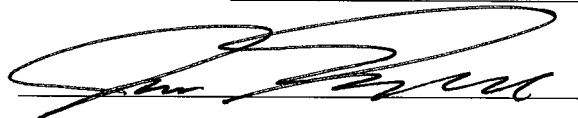
SECTION V - SIGNATURES

THIS INSTRUMENT embodies the whole agreement of the parties, there being no promises, terms, conditions or obligation referring to the subject matter other than contained herein. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument signed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their behalf.

CLIENT: Le Sueur County, Minnesota

CONSULTANT: Bolton & Menk, Inc.



Jason L. Fennite

Principal Engineer

EXHIBIT I

PROJECT RELATED SERVICES BY CONSULTANT

WEST JEFFERSON SANITARY SEWER COLLECTION SYSTEM LE SUEUR COUNTY, MINNESOTA

PHASE 3 – CONSTRUCTION PHASE ENGINEERING

Bolton & Menk's construction phase engineering includes administration of the construction contract, construction staking, construction observation, project start-up and construction close-out.

The specific tasks included in the construction and start-up phase are detailed below:

Task 3.1 – Construction Phase Engineering Services

Construction phase engineering services include the following:

- Response to contractor's questions regarding interpretation of and clarification of contract drawings
- Issue field orders, work directive changes and requests for proposals for changes and change orders to the construction contract
- Review change order proposal requests
- Attend preconstruction conference and prepare and distribute meeting notes
- Review shop drawings and distribute shop drawings to Contractor, District, Resident Project Representative and Engineer
- Coordination of material testing with testing firm contracted by the District(s)
- Review test and inspection reports prepared by others
- Review and approve contractor payment requests
- Prepare final construction record drawings
- Hold regular construction progress meetings on site; prepare and distribute meeting minutes
- Prepare regular newsletters for distribution to its affected residents
- Maintain an up to date web page through Bolton & Menk's website detailing project construction information
- Provide "as-built" drawings in paper and electronic format

Task 3.2 – Resident Project Representative Services

A Project Construction Engineer will be assigned to provide overall supervision and oversight to the construction observation team. A Lead Resident Project Representative (RPR) will also be assigned as the engineer's representative who will be on the construction site at all times. Due to the potential complexity of the project, Bolton & Menk proposes to utilize additional staff in addition to the Lead RPR, depending on the level of construction activity taking place at the time. All RPRs assigned to this project will have experience in underground construction work, and the Lead RPR will have a minimum of 15 years of experience. The Lead Resident Project Representative and other construction observation staff will be responsible for the following items:

- Attend preconstruction conference
- Attend weekly construction progress meetings and prepare minutes
- Assist project engineer with the preparation of change orders and written directives

- Assist project engineer with the review and approval of shop drawings, materials lists, suppliers lists, and other required submittals by Contractor
- Schedule and coordinate construction staking
- Schedule and coordinate materials testing
- Assist the project engineer with the preparation, review and approval of partial pay requests
- Meet with affected property owners, as required, to answer specific questions or to address construction or design related concerns. The Resident Project Representative will be the primary contact person for property owners for addressing construction related concerns and issues.
- Serve as engineer's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of the Contract Documents
- Assist project engineer in serving as Owner's liaison with Contractor
- Review of work, rejection of defective work, inspections and tests:
 - Conduct on-site observations of the construction in progress to assist the Project Engineer in determining if the work is in general proceeding in accordance with the Contract Documents
 - Report to Project Engineer whenever RPR believes that any work is unsatisfactory, faulty or defective or does not conform to the Contract Documents
 - Verify that tests are conducted in the presence of appropriate personnel and that Contractor maintains adequate records thereof; and observes, records and reports to Project Engineer appropriate details relative to the test procedures
- Report to Project Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Project Engineer
- Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to Project Engineer.
- Transmit to Contractor decisions as issued by Project Engineer.

Task 3.3 – Construction Documentation

Our resident project representatives will collect and maintain comprehensive construction documentation of construction activities, including pre-existing conditions prior to construction, individual grinder pump installations prior to backfill, critical connections, finished conditions, and any other critical event or installation. The documentation will include digital photos that will be compatible with the County's GIS mapping and database systems (Subtask 3.8). Incorporating this documentation will provide the following benefits for the project team and the West Jefferson Lake Subordinate Service District:

- Digital photo documentation showing pre-existing conditions and as-constructed conditions
- Improved communication and time savings on requests for information, change orders, punch list items, and warranty issues
- Dispute and litigation avoidance if issues should arise during or after construction
- Accessibility of information for operations staff after construction is complete and system is up and running

Task 3.4 – Construction Staking

Provide the construction staking for the infrastructure elements to be constructed, including control points for the pressure sewer system mainline pipes and structures and lift station site and locations of individual grinder pump stations.

Task 3.5 – Start-Up/Warranty Period Services

Bolton & Menk will coordinate the equipment start-up services with District operations staff, contractor, and equipment suppliers. Normally, there is a contractual requirement for the supplier of each piece of equipment to provide start-up services and operator training. This would include on-site assistance during the initial stages of start-up followed by periodic visits and telephone consultations as required. We will also work with the contractor in conjunction with West Jefferson Lake Subordinate Service District to resolve any issues that arise during the warranty period.

Task 3.6 – GIS Mapping

Bolton & Menk will create GIS-based mapping and data to support the public information processes, preliminary design, final design and construction of the sewer system. Following construction, the GIS team will supplement the GIS system that was developed during the planning and design phases based on as-built conditions. The database will be created to identify the sewer system components and allow the tracking and reporting of maintenance and replacement activities. Attributes that may be established for the sewer system components include the following:

- Pipe Size
- Pipe Material
- Structure Elevations
- Structure Sizes
- Pump Types
- Valve Types
- Maintenance Notes
- Links to Photo Documentation Data
- Selected Sections from O & M Manual

The mapping and database information will be compatible with the County's existing GIS system. If requested, we can assist the County in developing a web interface that would make the sanitary sewer system information more readily accessible to operations staff as additional services.

Task 3.7 – Public Information and Communication

The Bolton & Menk project team will have primary responsibility for developing and implementing the public information process during the construction of the project. The team will provide expertise and resources to effectively communicate the timelines of the project, the project scope, and other information to the affected residents and property owners. These include but not limited to construction newsletters, website and other communication documents for public and/or resident consumption.

I.B. ADDITIONAL SERVICES

Engineering services performed other than those authorized under Section I.A shall be considered not part of the Basic Services or Construction Phase Services and may be authorized by the CLIENT as Additional Services. Additional Services consist of those services, which are not generally considered to be Basic Services or Construction Phase Services or are not definable prior to the commencement of the project or vary depending on the technique, procedures or schedule of the project contractor. Additional services may consist of the following:

1. EASEMENT & ACQUISITION SERVICES. Boundary and easement surveys for the purpose of describing project sites and easements, preparation of property descriptions, site maps, assistance with eminent domain proceedings, court preparation and testimony.
2. REMONUMENTATION. Replacing lost or obliterated government survey corners or property corners along the project route.
3. ENVIRONMENTAL SERVICES. Environmental services associated with hazardous materials leaks and contaminated soils.
4. ARCHEOLOGICAL SERVICES. Any required archeological services will be provided as additional services.
5. All other services not specifically identified in Section I.A.